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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 BILLY RAY VOLK,

9 Petitioner,

10 v.

11 PAT GLEBE,

12 Respondent.

CASE NO. C11-5821 BHS

ORDER ADOPTING THE
REPORT AND
RECOMMENDATION

13 This matter comes before the Court on the Report and Recommendation (“R&R”)
14 of the Honorable Karen L. Strombom, United States Magistrate Judge (Dkt. 21) and
15 Petitioner Billy Ray Volk’s (“Volk”) objections to the R&R (Dkt. 22).

16 On March 29, 2012, Judge Strombom issued the R&R recommending that the
17 Court dismiss Volk’s petition with prejudice because the petition is time barred and Volk
18 is not entitled to equitable tolling. Dkt. 21. Volk objects and argues that he is entitled to
19 equitable tolling because he is actually innocent. Dkt. 22. He bases his claim of actual
20 innocence on a DNA report (Dkt. 2-1, at 21-22) and the victim’s conflicting testimony
21 whether the rape ever actually occurred. The Court agrees with Judge Strombom that this
22 evidence does not meet the high burden of actual innocence. Dkt. 22 at 8.

The Court having considered the R&R, Volk's objections, and the remaining record, does hereby find and order as follows:

- (1) The R&R is **ADOPTED**;
- (2) Volk's petition is **DISMISSED with prejudice**; and
- (3) A Certificate of Appealability is **DENIED**.

Dated this 14th day of May, 2012.


BENJAMIN H. SETTLE
United States District Judge